

# *Chapter Six*

## **Jail Population Management**

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## *Chapter Six*

# **Jail Population Management**

The effective management of the Gallatin County jail depends not only upon the number of available beds, but also upon the effective management of the larger system in which they reside. The management of the jail depends upon the timely processing of cases, access to a range of pre-trial release options, and the availability of a continuum of sanctions designed to change criminal behavior.

With this in mind, this analysis was based on a comprehensive examination of the Gallatin County criminal justice system. This included an examination of jail 'snapshot' data; an analysis of a sample of cases tracked from jail booking to sentencing; a review of a sample of drunk-driving cases; an examination of operational policies and procedures; and a review of system resources.

The recommendations outlined below are based on this review.

### **A. Information Systems**

#### **Invest in an Updated Information System**

The advancement of the local criminal justice system must begin with an investment in an updated information system. Gallatin County is laboring under an antiquated information system that cannot meet the operational and planning needs of a county poised to design a more efficient system. The progress of the local system must begin with a commitment to fund the most fundamental tool necessary to inform and guide the work ahead: a new information system.

#### **Establish Information Linkages with Police and Other Agencies**

Gallatin County's law enforcement needs electronic access to information regarding a defendant's status and the judicially imposed conditions of release.

When arresting a person accused of domestic abuse the officer needs to know if the victim has an 'order of protection' against the defendant. Without this, police officers are put in the position of having to make tough calls without the benefit of full information. In some cases officers contact judges at home after hours to inquire about the existence of a 'no-contact' order. This needs to be remedied.

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The lack of connectivity in the system causes operational inefficiencies. Law enforcement can't access the jail, the courts, or probation and parole; and there is no electronic access to warrant information.

In addition, the I-LEADS dispatch system is not compatible with the jail system. These should be integrated. The first order of business needs to be the purchase of a new Jail Management System.

### **B. Pre-Trial Services**

A presumption favoring recognizance release and unsecured bond was first set down, in guideline form, by the Federal Bail Reform Act of 1966. The Act also required federal judicial officers to consider a defendant's "community ties" when making release decisions in non-capital cases; introduced the concept of 'conditional release;' and authorized the deposit of 10 percent bail with the court.

For those cases approved for pre-trial release, the Federal Bail Reform Act instructed the judicial officer to take the least restrictive steps to assure appearance. In 1968, the American Bar Association published the first standards on pre-trial release, and some years later issued the following statement:

*"Pre-trial incarceration should never be resorted to without first exhausting the possibilities of adequate supervision for defendants on conditional release. Conversely, it is equally indefensible to release criminal defendants who might commit new, and in particular dangerous, offenses pending trial without also taking reasonable steps to protect the community against that danger." (ABA)*

Pre-trial Services is an indispensable component of a criminal justice system, and as such, should be administered by local unit of government. With the formation of a pre-trial program earlier this year, Gallatin County has taken the important step of integrating this function into the criminal justice system. This has prepared a foundation upon which a full-service program can be built.

### **Establish a Full-Service Pre-trial Program**

Pre-trial programs act as a gatekeeper for the criminal justice system. Pre-trial personnel provide vital information to judicial officers to inform the release/detention decision. They help determine whether the defendant meets the criteria for the appointment counsel; interview and verify background information for the purpose of setting the conditions of release; and monitor, track and supervise defendants who have been released pending trial.

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### Pre-trial Screening

Pre-trial staff should screen all defendants booked into the jail and make recommendations to the court regarding release and the imposition of conditions that could mitigate risk. They should also help identify possible candidates for pre-trial diversion programs, and provide information regarding the defendant's eligibility for appointed counsel.

With a full-service pre-trial program the judiciary has the benefit of comprehensive information on each case to support release/detention decisions — verified information that includes criminal history, failure-to-appear incidents, drug involvement, and ties to the community. And, for each defendant, pre-trial staff provides the court an objective assessment of risk.

The identification of diversion clients is an important function of pre-trial programs. In Gallatin County, giving pre-trial staff a central role in the identification of candidates will help eliminate redundancies in screening and expedite a defendant's entry into drug court.

*Seventy-three percent (73%) of defendants in Gallatin County are appointed counsel.*

Pre-trial staff has already started screening clients for eligibility for appointed counsel. Delegating this task to pre-trial will relieve pressure from judges and public defenders; will serve to make the assessment of need more uniform; and will expedite the assignment of counsel.

### Pre-trial Supervision

*An incredibly low percentage of misdemeanants (4%) and felons (12%) in Gallatin County are released on their own recognizance prior to trial.*

At the time the study data was collected there were no defendants under county pre-trial supervision. At this time the county pre-trial program has six individuals under supervision. With the addition of one full-time person dedicated to this task the program should be able to accommodate 50 to 60 individuals under supervision at any given time.

*A review of 97 cases screened by pre-trial services in 2003 revealed that staff recommended approximately half (47 defendants) for pre-trial supervision. Approximately one-quarter of those so recommended (12 defendants) were actually mandated to pre-trial supervision as a condition of release.*

*The majority of defendants recommended by staff for pre-trial supervision were released on bond or their own recognizance.*

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A county operated pre-trial supervision program represents a new option for the courts. Increasing reliance on this will depend upon establishing comprehensive and reliable services. The county is just now beginning the development of this phase of the program.

The Pre-trial Oversight Committee should review the schedule of graduated levels of supervision. And supervision services should be enhanced, with expanded access to pre-trial group sessions, electronic monitoring, and urinalysis testing.

*Fourteen percent (14%) of persons with felony charges were re-arrested between the time of release from jail and the resolution of their case.*

The goal of pre-trial supervision should be to mitigate the incidence of re-arrest or non-appearance through a range of responses that includes programs, sanctions, and levels of supervision.

### Court Date Notification

A pre-trial program should provide court date notification to all defendants released for supervision, and to all those released on their own recognizance. The notification can take the form of a written notice of the date, location, and time of the court hearing, and be sent to the defendant prior to each scheduled appearance and/or provided through phone contact.

Pre-trial staff can also play a role in providing court date notification to defendants who have been issued a summons: a further inducement to increase the number of people issued a summons in lieu of booking.

At this time the pre-trial program is not able to systematically provide court date notification. Even with additional staff, this will continue to be a difficult assignment because of the lack of an electronic court calendar. It is currently difficult for pre-trial to access accurate, timely, or complete information.

A protocol will need to be worked out to provide reliable advance notice to pre-trial staff about court dates.

### Failure-to-Appear Tracking

*The failure-to-appear rate was 5% for district court and 21% for justice court.*

An important new role for the pre-trial program will be the routine response to defendants who fail to appear at scheduled court appearances.

When a defendant misses a court appearance the most common reason is not that they have fled the jurisdiction, but more simply that they forgot,

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they lacked transportation, etc. Of course, pre-trial services can avert most 'failure-to-appears' by establishing good communication beforehand. But in the event of a missed hearing, pre-trial staff should immediately contact the defendant, and arrange to get the defendant re-scheduled and back to court.

### Bail Review

*The average time in custody prior to pre-trial release was 23.2 days for those with a felony charge. Those released on their own recognizance spent an average 14.8 days in custody, and those released on surety were detained an average 9.1 days prior to release.*

Pre-trial programs play a crucial role in the on-going screening of the in-custody population, with a goal of expediting the release of appropriate defendants. Many of the defendants who are released from custody are not released until their cases have reached the district court. More of the releases should be occurring while the cases are in justice court. Too often high bails are set in the justice court and lower bails or orders to release the defendant come from the district court. The goal is for most of the release decisions to occur in the justice court.

Staff should routinely review the pre-trial population to ensure that no cases have been missed; and to determine, for those cases interviewed, if factors associated with the initial detention decision still apply.

### **Fund Additional Pre-trial Staff**

Three additional staff should be hired to support the initial phase of the pre-trial program expansion. The four positions should be allocated as follows:

Director	1 FTE
Pre-trial Screener	1 FTE
Supervision Case Manager	1 FTE
Clerical Assistant	1 FTE

At this time the program has one full-time person who attempts to screen persons booked into jail; verify defendant information and prepare reports; attend court sessions to present information; assess individuals for public defender eligibility; and maintain a small caseload of supervised defendants. The program is stretched beyond its limits.

### **Validate the Pre-trial Risk Assessment Instrument**

Risk assessment instruments are objective point scales that assign weights to variables such as the seriousness of the prior criminal record, the existence and severity of any substance abuse problem; family ties,

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housing stability, and employment status. These instruments provide a standardized assessment of the two types of risk considered by the court: the risk of 'flight' and the risk to community safety.

An objective risk assessment can reduce disparities in bail; provide a framework for managing jail resources, and offer guidelines for determining pre-trial conditions of release to mitigate risk.

At this time, the Gallatin County Pre-trial Program is using a generic risk instrument, adopted from another jurisdiction. This instrument should be validated. This involves tracking a sample of defendants over time, to identify factors that are predictive of failure-to-appear and new criminal activity pending trial. The instrument must also be tested to ensure that it classifies defendants equitably regardless of sex, race, or economic status.

### **Reduce Reliance on Surety Releases**

*In the study the average money bail for felony defendants was \$36,300.*

The release of defendants prior to trial should be dictated by an objective assessment of risk — not personal finances. Bail policies that tie the bond amount to the charge without a full analysis of risk, coupled with an over-reliance on surety releases, result in release decisions that neither protect the community nor ensure fair and equal treatment for defendants.

The non-refundable surety bond fee could be used by the defendant to pay fine, costs, restitution, or reimbursement of public defender costs.

*Sixty-seven percent (67%) of those released from jail prior to trial were released on a surety bond.*

Surety releases can discriminate against defendants without the means to post bond — often leaving poor defendants with minor charges in jail, while those with more serious charges are released. Moreover, surety releases are not accompanied by the kind of supervision and support services that are part of a fully operating pre-trial program. These include routine urinalysis, face-to-face supervision, and treatment and support services.

*Seventy-five percent (75%) of defendants charged with a felony had bail set at \$2,501 or more.*

A person's ability to post a monetary bond bears no relationship to the risk that they pose to the community. Release decisions should be based on an assessment of risk, with all higher risk cases assigned to Pre-trial Services for supervision and monitoring.

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### **Establish a Pre-trial Oversight Committee**

A group has been meeting for the last several months to discuss issues relating to the new pre-trial program. The membership of this group should be reviewed, and the committee formalized as a permanent subcommittee of the Criminal Justice Council.

### **Advocate for a State-wide Pre-trial Statute**

Gallatin County is blazing new ground for Montana with their support of a county-based pre-trial program. This is a good opportunity to work with the state legislature to craft a statute that addresses the issues inherent in operating such a program. The lack of a comprehensive statute has left unattended the many issues relevant to both county and non-profit pre-trial programs.

Issues to address in a statewide statute include: service standards; decision-making authority; training requirements; reporting protocols; record-keeping mandates; arrest powers, etc.

## **C. Community Court Services**

Gallatin County founded a drug court program in 1998, funded by federal grant funds. The program targets felony offenders with drug possession or related charges. Over a four-year period the program has served a little more than 60 defendants, and graduated 25.

In 2001, Gallatin County received a grant from the Montana Board of Crime Control to establish community corrections programs. Members of a local oversight committee decided to make 'restorative justice' the focus of their efforts. Community service options and a reparative sentencing board were started.

### **Establish an Office of Community Court Services**

A new Office of Community Court Services should be formed under the Court Administrator, to bring together the various community-based Corrections programs: Community Corrections, Pre-trial Services, Drug Court, and Re-entry Services.

This change will move the county towards a more cohesive approach to the delivery of community-based services, and will provide a focal point for the further advancement of a strong continuum of intermediate sanctions.



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### **Maintain ‘Restorative Justice’ Approach for Low-Risk Offenders**

*In November 2003, there were 56 ‘open’ cases in the Community Corrections Program.*

Gallatin County has developed a constellation of programs for misdemeanor offenders that have, as their goal, the promotion of individual accountability and the restoration of the victim. Community service sanctions, a reparative sentencing board, and victim impact panels are offered, as well as one-on-one money management assistance.

*The most common charges against defendants in the program were: Minor in Possession, Disorderly Conduct, and No Insurance.*

These programs represent an important and appropriate response to the first-time offender who represents a low risk. By integrating this work with other efforts under an Office of Community Court Services, the benefit of these programs can be extended to felony clients, and the program offerings expanded. These programs have not been utilized to the extent anticipated.

*Approximately one-third of defendants in Community Corrections had money management sessions as stand-alone sanctions or mandated as an add-on program condition.*

Money management — now provided in individual sessions — could be offered as a class that addresses a broader range of ‘life skills; cognitive (“thinking error”) classes added; and alcohol and drug groups developed to provide sessions for individuals waiting formal treatment or in need of aftercare. These are just a few of the programs that could be developed to simultaneously serve as a supplemental pre-trial condition, post-trial sanction, or as a support service for offenders re-entering the community after a prison term.

To strengthen the existing program, consideration should be given to the development of a recommended range of community service hours by type of offenses. This would serve to reduce disparity between judges in the allocation of these hours.

In addition, the cost of community service should be reviewed. The program charges a \$40 fee and an hourly rate. Several probation officers indicated that they would consider taking advantage of this program if the cost were not so high.

### **Expand the Continuum of Treatment Services**

Gallatin County lacks the full continuum of treatment services needed to support individual change and control the long-term demands on the jail

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and criminal justice system. Although the system is not without good programs, gaps in service present a challenge, and a fee-based system makes access a problem.

The research on recidivism argues for funding quality treatment programs for high-risk offenders. Alcohol and drug treatment, cognitive training classes, sex offender counseling, and vocational and educational programs have all been shown to be crucial investments for a safer community.

### Alcohol and Drug Services

Gallatin County lacks both ends of the alcohol and drug spectrum: the county has no detoxification facility for those needing a response short of jail, and it lacks good access to in-patient treatment for those who have failed other less intensive options. There is currently a waiting list for those in need of outpatient treatment.

*The best investment in treatment has proven to be intensive outpatient. This treatment should incorporate cognitive training principles, be at least three months in duration, and have a strong 'aftercare' component.*

With the development of a comprehensive pre-trial program and the planning of a new jail, there is an opportunity to build a continuum of programs that reinforce the goal of accountability and constructive change at each stage of system involvement.

Ideally, the same treatment curriculum would be available at each point in the system, whether at pre-trial, in-custody, post-sentence, or re-entry from prison. This would allow for the reinforcement of treatment principles at each stage of the continuum.

### Sex Offenders

The lack of subsidized treatment for mandated clients is especially problematic when it comes to sex offenders. Although, as in alcohol and drug treatment, the client can pay for services on a sliding scale, there are cases where the minimum charge cannot be met.

One officer noted that, "while sex offenders are not revoked because they cannot pay for treatment, they are sometimes revoked because the counselor terminates them...for lack of payment." The cost of local sex offender treatment is approximately \$180 per month.

Adequate sex offender treatment is a problem on a larger level, as well. For example, it was reported that the pre-release center in Butte wouldn't take sex offenders.

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### The Mentally Ill

Gallatin County suffers from a chronic lack of services for the mentally ill. There is no community crisis stabilization facility forcing law enforcement officers to spend considerable time in out-of-county transports; nor is there local in-patient treatment for the mentally ill. And, with the loss of in-custody psychiatric services earlier this year, the jail has been confronted with the special challenges that attend the management of this population.

*Nine percent (9%) of jail admissions had eleven or more prior arrests.*

The re-cycling of defendants through the jail speaks dramatically to the cost of system failure. A lack of services impacts the jail, strains law enforcement agencies, and compromises the health and safety of staff and defendants alike.

The county should, however, be congratulated for the recent efforts to remedy some of these gaps: the county has increased their contribution for mental health services, facilitated the opening of a group home, and has made video-conferencing available to help reduce the number of out-of-county transports.

Consideration should be given to the design of a specialty court for this population, modeled after the drug court diversion program. At the same, time the county should explore the development of a crisis stabilization facility and the funding of a range of treatment options.

In addition, the new Office of Community Court Services should explore how they can work with the jail to facilitate discharge-planning services (providing a bridge between jail and community case management) for this population.

### The Drunk-Driving Offender

*Twenty-five percent (25%) of jail admissions were comprised of drunk-driving offenses.*

The problem presented by the drunk driver is a major issue for Gallatin County. The overcrowding in the jail has forced law enforcement officers to increasingly cite and release — instead of book into jail — non-felony ‘Driving-under-the-Influence’ and ‘Driving-while-Suspended’ cases.

*The majority of persons arrested on drunk driving charges were given citations and released (82%), instead of being booked into jail.*

The seriousness of these offenses demands a uniform response, in which all drunk-drivers are booked into jail and screened by pre-trial services.

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These cases should then be considered for a treatment-based diversion option modeled after drug court; and the county should expand the sheriff's work crew program to serve as an alternative jail sanction.

*Nineteen individuals from Gallatin County have completed the WATCH Program.*

The county should develop a cognitive-based aftercare class for those inmates returning to the county from the in-prison WATCH Program.

*Inmates in the WATCH program have, on average, 5.6 prior drunk-driving arrests.*

Community safety would be served by providing follow-up group sessions for Gallatin County defendants exiting this six-month program.

This report also recommends the formation of a committee to examine the issue of drunk-driving, and to craft a plan for a criminal justice response. This should include a review of police policies; pre-trial monitoring and drug testing policies; specialty court diversion options; treatment and case management programs; and alternative sanctions, such as an expanded work crew program.

### Domestic Violence

The state of Montana has, through their Code, ensured that those charged with domestic violence are not released prior to a judicial hearing; and Gallatin County has done a good job of making sure that victims are notified prior to a defendant's release from jail. As the jail moves forward to replace its information system, a linkage with the VINE system, which automates the notification of the victim of changes in custody status, should be developed.

*Defendants charged with domestic violence had, on average, 6.2 prior arrests — the highest incidence of prior arrests among the different charge categories.*

The response to domestic violence can be strengthened by making pre-trial supervision (with electronic monitoring, where needed) the norm. The release of a defendant on bond does nothing to protect the victim. The formation of a specialty domestic violence court — modeled after the drug court — should be explored, along with the provision of intensive, cognitive-based treatment.

Providing the court with the ability to have a psychological evaluation completed by either a psychologist and/or by administering an inventory to the defendant will assist the court in making release and/or sentencing decisions. It will also assist in establishing appropriate levels of supervision.

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Local law enforcement officers have made a tremendous commitment to refining their response to these cases. The police have a special domestic violence protocol and receive on-going training from victim services.

Law enforcement can further strengthen its response by, as part of their initial questioning, asking the victim to quantify perceived levels of fear or future harm (on a scale of 1-10). This information, collected at first contact, can then be factored into judicial decision-making about pre-trial release and mandated conditions of supervision.

### **Strengthen and Expand Drug Court**

Gallatin County has a strong drug court program. It has a committed team of professionals, a program that strives to provide diverse services, and, in Judge Salvagni, a judge who demonstrates the power and the potential of the court to change lives.

*There are currently 18 individuals in the drug court program.*

The county drug court should be supported and expanded. With existing workload averaging from 15-18 individuals there is much room for growth.

The first order of business needs to be to secure stable funding. This should be at a level to support at least 50 to 60 clients at any one time. Case management services (now provided by a probation officer), need to be preserved at some level as the county continues to explore its options.

*Entry into the program can take from several weeks to several months.*

To strengthen the program, the time to program entry should be shortened. This can be accomplished by relying on pre-trial staff to identify eligible cases — instead of the current system in which the probation officer interviews candidates in jail; and by ensuring that attorney assignment occurs at the earliest possible time.

In addition, the detailed alcohol and drug assessment that is conducted by the treatment provider prior to program entry should be deferred. Given that the more detailed assessment has not generally served to disqualify individuals, an abbreviated assessment should suffice prior to program entry.

*Fifty percent (50%) of the cases referred to the program actually enter the program.*

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In the interest of efficient screening and consistent decision-making, the program eligibility criteria should be reviewed. The program has a high 'no-entry' rate (cases can be rejected by the county attorney or the defendant can choose not to participate). The policy regarding eligibility should be discussed (for example, does a prior charge without a conviction disqualify a person?) and then memorialized. As part of this discussion, the protocol for case review and rejection should also be re-examined with the goal of increasing the number of defendants eligible for program entry. The national Drug Court research demonstrates that this program works while the alternative of either incarceration or regular probation does not yield the same results.

*Ninety percent (90%) of clients served have felony charges.*

As the program moves to expand it should also consider broadening its target population. An argument can be made for serving more violation of probation cases, in which the offender faces a prison sanction.

Community safety is served by working with the more serious offenders who will, after imprisonment, be returning to the community. Nationally, drug court programs continue to demonstrate good success with the older, high-risk client.

*The program has four phases that range in intensity from three group sessions per week to one per month.*

As the county considers the benefits of offering in-house treatment it should approach the state about supporting a more intensive level of service. Given what the research says about long-term treatment effectiveness, the goal should be to provide three to four treatment sessions per week for the first 90-days. Currently, the number of sessions is reduced sharply: from three group sessions and one individual session per week, to one group session per week, after the first 60 days in the program.

*Cognitive-behavioral classes have a proven track record in reducing recidivism.*

At a time when the program is struggling to maintain existing services it is difficult to talk about adding components, but a good cognitive-training class would be an important addition.

The research on the effectiveness of this approach is compelling, and as such, cognitive sessions should be a component of all treatment offerings. This approach confronts the internal "thinking errors" that individuals use to rationalize behavior; addresses the importance of accountability; and assists the person in crafting a plan for effecting personal changes.

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*The most effective drug court programs have been shown to reduce recidivism by 29%.*

The Gallatin County program should be evaluated. The study should be designed to compare recidivism rates of drug court participants to a matched group of offenders. As part of this study, the value of a residential treatment component should also be evaluated: Do clients who participate in a 30-day inpatient treatment have higher success rates than those who do not?

An evaluation of the drug court will help refine the program and measure its impact locally on individuals and the system.

### **Develop Specialty Courts**

Treatment courts have proven their value in reducing recidivism. The existing drug court model should be adopted for other populations under the jurisdiction of the court with countywide jurisdiction: Justice Court.

Populations that should be served in these courts are: the mentally ill, drunk-drivers, and offenders charged with domestic violence.

### **Advocate for Enhanced Community Corrections Act Funding**

Although Montana passed a Community Corrections Act in 1999, the level of funding available cannot support the range of programs needed for a strong continuum of community services.

Community Correction Act (CCA) legislation has grown out of the recognition that the best approach to slowing the growth of prisons is to provide an effective continuum of supervision, sanctions, and treatment in the community for high-risk offenders. The first Act was passed in Minnesota in 1975.

The purpose of the Community Corrections Act is to provide appropriate sentencing alternatives; and to provide improved local services for persons charged with criminal offenses, with the goal of reducing the occurrence of repeat criminal offenses.

These Acts are grounded in the philosophy that crime is best addressed by counties that are supported in developing a full range of intermediate sanctions, and that have a central role in the planning and delivery of these services. As such, some CCA states have mechanisms for shifting funds to counties to design and administer a range of programs: from treatment and vocational training to enhanced supervision and rigorous sanction options.

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In Oregon there is a provision for three distinct levels of participation in the Act. Counties can choose to not participate; to manage only treatment and support services; or they can opt to manage both supervision and services. Counties receive state funds based on an allocation formula that takes into account, among other things, the proportion of the local probation and parole caseload comprised of high-risk felons.

The value of this approach is that it acknowledges the need for a “systems approach” to corrections. In a state such as Montana, where community-based services are divided between counties, private non-profits, and the State Department of Corrections, there is cause to discuss a more coordinated approach.

Fragmentation can lead to redundant efforts (i.e. the local probation office and the county both operate community service programs), and can frustrate efforts to provide seamless services (Gallatin County is currently trying to develop a hybrid re-entry program that is supported by the state, county and a private non-profit).

An early evaluation of the Oregon Community Corrections Act found that fully participating counties had sent significantly fewer felons to the state prison two years after implementation, and concluded that the CCA was a cost-effective policy.

The Montana legislature should be encouraged to fully implement a Community Corrections Act.

### **D. Adjudication**

#### **Develop Early Case Resolution Protocols**

An Early Case Resolution Program operates under the sentiment of, ‘Same Justice Sooner.’ The goal is to provide a process for expediting the resolution of cases. And, while programs most often begin by focusing on first-time offenders, or property offenders likely to receive probation, there is no reason why, over time, more serious cases cannot be disposed of through this approach.

An experienced prosecutor and an experienced public defender (emphasis on the word experienced) will meet several times a week to review newly arrested criminal cases. The cases will be assessed to determine if, after reviewing available discovery, the case might be resolved either at, or shortly after arraignment. The goal should be to resolve a quarter to a third of the cases of all newly arrested defendants within 30 days of arrest. The offers will need to be realistic and aggressive. Both sides need to be engaged in the process of resolving cases.



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### Adopt a Vertical Prosecution Model

The existing bifurcated model, in which one attorney handles felony cases in justice court, and then transfers the case to another attorney when it moves to district court, works against consistent and expeditious processing. Vertical processing would provide a more effective response.

Prosecutors should be in attendance at justice court to confer with the public defender and initiate action on the case.

### Establish a Mechanism for Early Pleas

*Defendants detained prior to trial who subsequently pled guilty spent, on average, 181 days in jail before entering their plea.*

Developing a mechanism for accepting pleas at the earliest stages of prosecution would serve to expedite the process.

Given limited jail resources there can be no justification for housing defendants for extended periods who will ultimately plead. For this to occur, it is crucial that the new initiative to have public defenders meet with their clients prior to First Appearance hearings continue.

The public defender and the county attorney should meet before the initial appearance to immediately begin considering plea agreements in specific cases (i.e. first time offenders, and defendants charged with property offenses); to discuss possible candidates for drug court diversion; and to seek agreement on conditions of release.

### Ensure Timely Sharing of 'Discovery'

To expedite case processing, an automatic system of providing 'discovery' and deadlines for its transfer should be established. This protocol should allow for the sharing of 'discovery' without a requirement that a formal request be filed in each case.

### Set Prosecution Timelines

*The average time from district court arraignment to sentencing was 183.8 days.*

Time-standards should be set for critical points in the processing of the case. These should include:

- Time to Assignment of Public Defender
- Time to Bond Review
- Time to Arraignment
- Time to Disposition
- Time to Sentencing

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For some of these benchmarks there will be associated time-standards. For example, if a case is taken under advisement by a judge, system standards should guide the expected time to a ruling; and in violation of probation cases, standards should dictate the time to county attorney review.

Under the court administrator, progress has been made in meeting a standard of signing 'sentence & judgment' orders within 72-hours. This has taken place with the adoption of a new order form, and a change in procedure to the signing of orders in court immediately after the pronouncement of sentence.

### Set a Rigorous Continuance Policy

In the interest of expediting case processing, a policy should be set that more strictly limits the number of continuances.

### Resolve Holds and New Charges at the Same Time

*Jail 'snapshot' data reveal that on average 44 % of inmates in the jail are on 'hold' status.*

The system should set a priority for the resolution of holds. In some cases the hold is placed on an offender until the resolution of a violation of supervision.

*In the November jail 'snapshot' 74 percent of those with holds also had a local charge.*

Where there are both holds and new charges, both should be resolved at the same court hearing. The resolution of new cases that also have holds should be expedited so that the defendant can be returned to the demanding jurisdiction.

*On November 1, 2003, the average time in jail for cases on 'hold' status was 41 days.*

Where the 'hold' refers to a case awaiting transport to a state prison, attention should be paid to completing the necessary fingerprinting and paperwork required by the state before the person can be transported.

In those cases where an inmate is being held for another county, the time allowed that jurisdiction to retrieve the inmate should be shortened.

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### Adopt 'Time Certain' Court Times for In-custody Cases

Holding first appearance hearings for in-custody cases at 1pm, instead of in the morning, would allow pre-trial staff time to interview defendants and prepare paperwork for judicial review; and give victim services staff time to notify victims in advance, as required by law.

The above recommendations will take additional staff as discussed on page 28 of this chapter.

### E. Sentencing

#### Expedite Pre-sentence Investigation

*The average time from case disposition to sentencing was 43.5 days.*

Gallatin County judges have taken a more conservative approach than many other Montana counties in requiring a full pre-sentence investigation (PSI) in most cases. This investigation, conducted and coordinated by the Department of Correction's Probation and Parole Office (DOC), can take up to six weeks to complete, thereby contributing to a delay in sentencing.

Montana Code, although establishing a presumption for a PSI for individuals found guilty of one or more felony offenses, does give the judge discretion to depart from this requirement.

*"The court shall order a pre-sentence report unless the court makes a finding that a report is unnecessary." (46-18-111 (2))*

The local DOC Office does not have dedicated staff to conduct pre-sentence investigations, but instead rotates officers into the assignment. A good deal of time is spent clarifying official dispositions, interviewing victims, and awaiting the return of psychological exams ordered for sex offenders (this can take weeks to receive).

Montana's Code sets professional standards for the completion of all psychosexual evaluations, requiring that they be conducted by a sex offender therapist who is a member of the Montana sex offender treatment association (or has comparable credentials acceptable to the department of labor and industry). The turn-around time for therapists can slow the completion of the PSI.

The local PSI policy should be re-examined, with consideration given to expanding the use of a 'short-form' for certain cases: such as revocation cases where there is already a PSI on file. In addition, a two-week goal should be set for the return of completed investigations, with a discussion about the resources necessary to meet this target.

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The mechanics of conducting the investigations should be examined. Rather than waiting until the defendant has pled guilty or been found guilty, DOC should begin the investigation at arraignment. Out of state prior criminal histories can be gathered, as well as determining restitution amounts as soon as the defendant has been arraigned. In the rare instance where the case is ultimately dismissed or the defendant found not guilty then the information can be destroyed.

In addition, DOC should utilize the information developed by Pre-Trial Services. The initial background information should be shared between the agencies. In cases where defendants are supervised by the program, their success or failure as part of this program is an excellent indicator as to how the defendant will do on probation and should be included in the investigation.

### **Send Defendants with Local and State Sentences to Prison**

Given the severely limited jail resources, those defendants sentenced to both jail and prison should first be sent to the Department of Corrections. The existing policy is to jail the inmate until the local sentence has been served.

## **F. Post-Trial**

The local Office of the Department of Corrections has 11 staff and supervises over 400 offenders. A specialized intensive supervision unit oversees 20 higher risk offenders.

Several years ago the legislature passed a law to give local offices more discretion in sanctioning. Disciplinary measures can be taken for certain acts of non-compliance and intervention hearings can be initiated. A probation officer can hold a defendant in jail for 72- hours on a warrant, and can sanction a defendant up to 30 days in jail.

*Approximately 60 % of admissions to Montana prisons are revocations of supervision.*

The DOC has a range of sentence and sanction options that includes:

Supervision: \$2/ day

Intensive Supervision: \$12/ day (with electronic monitoring).  
A screening committee selects participants. The first phase lasts 90 days and includes electronic monitoring, weekly court appearances, weekly meetings with probation officer, mental health counseling, and cognitive thinking sessions.

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Pre-Release Center: \$41 / day. The state funds five centers that are designed to hold defendant six months to one-year. Operate as work release centers. If the sentence is successfully completed, the person is paroled back to DOC.

Connection Corrections: A 60-90 day in-patient treatment program in Butte. To access it a defendant must be sentenced to the Montana State Prison.

Prison: approx. \$50 / day

MAST: This is the DOC assessment center. Conditional Release sentences go here directly.

WATCH: \$65 / day. This is a six-month lock-down treatment program for felony DUI. Following release the defendant is on probation with a suspended sentence.

Boot Camp: \$87 / day. Defendant can have the sentence suspended upon successful completion of boot camp. Program provides 60 days of 'aftercare'.

### **Develop a Work Crew Program**

The local sanction continuum should be enhanced with a greatly expanded Sheriff-operated, work crew program. The 7-day a week program should be designed for offenders who would otherwise be incarcerated that are allowed to live at home and report daily to work in the community under the supervision of a Sheriff's deputy.

A strong work crew program offers a constructive alternative to a short jail sentence. It conserves limited jail resources while providing a meaningful response to minor offenses.

Offenders are held accountable and the community is restored. And when a work crew sentence is coupled with a requirement to attend cognitive training sessions or other classes that address underlying problems, lasting benefits can be achieved.

The work crew concept represents a paradigm shift in criminal justice thinking; one in which success is measured by the value of the work performed, rather than the days detained.

*The Gallatin County revocation rate is half the State rate.*

The local DOC Office has done a good job responding creatively to violations of supervision. Revocations are reserved for repeat offenders

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and new felony offenses, and an offender is seldom sent to prison for a positive urine test.

*In 2002, 27 offenders were revoked to prison from Gallatin County.*

The local DOC opts to transport offenders to one of the neighboring county jails for sanctioning, where the per-day rate is lower than the \$65 per day charged at the Gallatin County Jail (this rate is charged when the DOC office initiates placement, not the judge).

Planning for the new jail must take into account the need to accommodate the sanctioned population, and it must also consider how to strengthen the local continuum of non-custody sanctions. A work crew might be one option that would provide a measured response between community service and detention.

But having the ability to respond in the most strategic manner requires access to a full continuum of programs that can also serve as sanctions. Oftentimes, the best response to a positive urine test is a mandate to report to treatment. However, Gallatin County has waiting lists for treatment, and even then, gaining access to programs depends upon having the minimum finances to make payment. The availability of in-patient treatment is even more limited.

### **Continue Efforts to Develop Re-entry Services**

The state budget crisis, and the demand on the prisons caused by increasingly high numbers of revocations, has spurred changes in sentencing and release policies.

*In August 2003, Gallatin County had 19 offenders in Pre-release Centers around the state.*

To control prison crowding, the state now funds five pre-release centers. All are private, non-profit operations, employed as a 'step-down' mechanism from prison.

The planning for a local re-entry program fashioned through a county / state / private partnership is a wonderful example of how creativity and commitment can produce great results with limited resources.

### **Train all Staff in Cognitive Behavioral Principles**

Given the consistently strong research findings on the value of cognitive-behavioral classes, this curriculum should be incorporated into all work that is done with offenders. Cognitive sessions should be a central component of all addiction and anger management programs, and can be

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integrated into all other efforts as well — for example, offenders reporting for a work crew can begin the day by viewing and discussing a cognitive training video.

To promote a consistent approach to offender change all county and state staff working with offenders should receive cognitive training.

### Track Post-Sentence Outcome Data

The Criminal Justice Council should begin receiving quarterly reports from all components of the criminal justice system. These reports should include the most basic information needed to track trends in workload and to monitor outcomes.

The local Department of Corrections can assist this effort by beginning to collect the following information (on a quarterly basis) for both probationers and parolees under local supervision:

- ⇒ Number of new cases received
- ⇒ Number / percentage of positive case closures
- ⇒ Recidivism at 1-year, 2-years, and 3-years
- ⇒ The abscond rate (particularly for high-risk offenders)
- ⇒ Percentage of those mandated to treatment in treatment

### G. Victim Services

Gallatin County's Victim Services Office was established in 1993, when the County Attorney's Office was awarded a grant for a half-time Coordinator. In 1995, victim rights were significantly strengthened in Montana, and in 1998 the Gallatin program grew to its current staffing level, with two full-time positions. In 2000, the Victim Services Center opened in the Law and Justice Center, housing Victim Services, the Guardian ad litem program, and the Network's legal advocate.

The Victim Services program provides crisis counseling, information and referrals, court accompaniment, assistance filing for state compensation and completing victim impact statements, and parole notification.

*From 2002-2003 the program served 719 new victims. The majority (228) were victims of domestic violence.*

The program reports a marked increase in the number of assault victims over the last several years, and is also witnessing more serious injuries and multiple victims than in the past.

*Approximately 75% of the victims served are female.*

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The program is funded primarily through the Montana Board of Crime Control, which distributes federal grant funds. The program also receives some county funding through a victim/witness surcharge, which offenders pay upon conviction; and some funds from the City of Bozeman.

### **Expand Program to Serve Victims of Property Crime**

Services should be expanded to include victims of property crime in order to provide documentation of financial loss and case monitoring and tracking.

### **Formalize Communication with County Attorney's Office**

In order to meet state requirements for victim notification and consultation, the Victim Services Office needs advance notice of continuances, changes in court schedules, plea negotiations, and other information pertaining to the prosecution of the case. A protocol should be established for sharing this information.

To facilitate communication between Victim Services and the County Attorney's office, a monthly staff meeting should be held to review issues and staff cases. Having a routine time to communicate concerns and track issues will help strengthen both operations.

### **Expedite Time to Issuance of Restraining Orders**

Restraining Orders need to be issued and served the same day that they are ordered by the court. It was reported that there are times when this can take two to three days to be completed.

### **Support the Guardian ad litem Program**

Gallatin County has an exemplary Guardian ad litem (GAL) program. Managed by two-quarter -time staff, the program (established in 1986), oversees 40 trained community volunteers who assist with the investigation and management of abuse and neglect cases.

*At this time the program has 40 open cases, serving 63 children.*

The Gallatin County program accepts 100 percent of cases referred to it — one of only a few programs in the state to do so (the Billings office accepts 30% of cases).

Both the Victim Services Program and the Guardian ad litem program have long been sustained through grants and supplemental state support. In the event these programs lose outside funding, the county should be prepared to support them.



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*Cases are monitored until the child turns 18 years, and the average case is tracked for one to two years.*

It is recommended that the judges who handle dependency matters take advantage of on-going education in the complex issues that attend these cases. The Guardian ad litem program can make this available.

### **H. The Gallatin County Jail**

The Gallatin County Jail was built to house 39 inmates. The facility has structural flaws: it lacks adequate ventilation, heating and cooling; and it has design problems: the layout of the facility does not allow for the direct supervision of inmates.

#### **Remedy Immediate Safety and Structural Issues**

The work that has been initiated to address ventilation, air-temperature, and other structural issues in the jail speaks to this recommendation. These actions should be viewed as merely 'stop-gap' measures to maintain the existing facility until a new jail can come on-line. They are by no means a substitute for the permanent solution that this community needs and deserves.

#### **Set a Population "Cap"**

The conditions at the Gallatin County Jail demand immediate remedial action. A recent analysis by a nationally recognized jail expert has resulted in a recommended "cap" of 40 inmates. This represents more than a 30% reduction in the current average daily population, and its implementation will require significant adjustments within the system.

Unfortunately, Gallatin County has reached a point where it has no choice but to impose controls on the jail population. This action is required to meet accepted standards of care and to ensure the safety of the staff and the security of the facility.

#### **Establish a Routine Jail 'Snapshot' Review**

As part of this study, a methodology for collecting jail 'snapshot' data was developed and applied on a monthly basis. This data collection, and the Criminal Justice Coordinating Council's review of the information, should become routine. The tracking of jail and other system data will allow the Council to monitor and anticipate system change.

#### **Ensure Adequate Psychiatric and Medical Resources**

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Earlier this year the jail lost medical support. This is, of course a basic service for a facility holding inmates with complex physical and emotional issues. The county must do whatever necessary to ensure that medical support is available.

As part of a more unified response to the mentally ill, the jail should also work with the community to provide discharge planning for this population. The goal should be to provide transition planning that ensures the individual continues to receive medication monitoring and other assistance.

### **Provide Corrections Officers with EMT Training**

All staff assigned to work in the jail should receive basic training in emergency management techniques. Given the loss of medical support experienced this last year, this becomes especially critical.

### **Design a Jail for the Future**

The ultimate size of the facility needed for the future is contingent, in large part, on the successful implementation of the aforementioned recommendations. The forecasted jail-bed need by the year 2025 ranges from a minimum of 131 beds to a high of 209 beds.

Planning a new jail begins with plans for a more efficient and effective criminal justice system.

## **I. Juvenile Services**

Although not the focus of this report, many of the same issues confront this component of the system.

The state supreme court administers the local juvenile department. The Gallatin County office receives more than 250 referrals per year and has, at any given time, approximately 120 youth on probation. The county has, like the rest of the nation, experienced a decline in numbers over the last several years.

The philosophy of the local office is to do everything to keep the child in the community, with diversion offered to first time offenders.

There is room for system improvement in expediting case processing. Delays in out-of-custody processing have meant waits of eight months or more for the filing of petitions or decisions to decline. If the juvenile is in detention filing is completed within seven days.

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Measures that can be taken include ensuring that the public defender confers with the youth and family prior to the first court appearance; the dedication of a single county attorney to juvenile cases; and the consolidation of multiple hearings. Recent progress has been made in the timely filing of cases.

There are local service deficiencies for juveniles that impact the system. Law enforcement officers struggle with the lack of resources for stabilizing violent youth. They can take a juvenile to a temporary holding room in the Law and Justice Center (this is little used), to Shelter Care, or to detention. The Shelter Care program is currently being sustained by supplemental county funds until the legislature can address the reimbursement schedule.

There are no local services for sex offenders. The local office can order a psychological evaluation to determine if the youth needs inpatient treatment, but the closest program is 300 miles away, and it only takes males.

As at the adult level, there is a lack of services for the mentally ill. In the most extreme cases, youth can be sent to several out-of-county residential facilities, but the goal is to keep the juvenile in the community.

However, while dealing with gaps in service, the local office has worked hard to provide quality diversion, alternative sanctions, and treatment options.

### **J. Committees**

#### **Establish four Subcommittees of the Criminal Justice Coordinating Council (CJCC)**

To address the issues outlined in this report, the formation of four committees is recommended.

1. Community Court Services  
This committee should work towards the integration of existing pre and post-sentencing community programs.
2. Adjudication  
The focus of this committee should be to address the recommendations for expediting the resolution of cases.
3. Pre-trial Services  
This committee should provide policy direction and oversight, and assist with the implementation of a full-service pre-trial program.
4. Special Populations  
Two areas of emphasis are the mentally ill defendant and the drunk-driver. To take advantage of existing knowledge and experience, the

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issue of the mentally ill defendant might be best worked in the local mental health advisory committee; chaired by Commissioner Vincent.

A separate CJCC committee should be established to formulate a range of local responses to the drunk-driver.

### **K. Staffing**

#### **Fund Additional Staff Positions to Support the Recommendations**

The recommendations advanced in this report are crucial for the long-term management of the jail population. This report addresses a broad range of measures that will need to be taken to achieve this goal, many of which require a commitment of additional staff and resources.

This report makes only two specific recommendations regarding staffing: the need for an immediate increase of five positions at the jail, to address safety and security issues (based on the Liebert and Associates analysis); and the addition of three staff to Pre-trial Services, to support the first phase of a planned full-service program.

Beyond this, the ability to carry out the system changes outlined in this report will require additional staff for the sheriff (Work Program), county attorney, the public defender, and victim services. And, although no specific recommendations are made for these offices (the staffing analysis will be conducted by the Carter Goble team), the success of the proposed changes depends upon adequate support.

In the end, system change is achieved by not only having a blueprint for the future, but by having the committed staff to give it form.